IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 793 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRABHAI SOMABHAI BRAHMBHATT - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI and MR SP MAJMUDAR for the Petitioner.
Mr. K.L.Pandya, Asstt. GOVERNMENT PLEADER for Respondent nos.1 to 4.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 06/12/2006

ORAL JUDGMENT

The present petition is challenging the order dated 15th February, 2002 passed by the District Supply Officer, Sabarkantha at Himmatnagar; order

dated 24th July, 2002 in Appeal No. 1 of 2002 passed by the Collector, Sabarkantha at Himmatnagar as well as the order dated 6th January, 2006 passed by the Deputy Secretary, Food and Civil Supplies Department, State of Gujarat, Gandhinagar in Revision Application No. 56 of 2006 mainly on the ground that the documents which are extensively referred in the notice and relied upon by the District Supply Officer, Collector and Revisional Authority have not been supplied to the petitioner. Thus, the challenge is on the basis of the violation of principles of natural justice.

2. The learned counsel for the petitioner submitted that the show cause notice was issued by the concerned respondent authority to the petitioner in the month of January, 2002 wherein several allegations were levelled against the petitioner. On the basis of the statements recorded during the inquiry by the concerned respondent authority, the statements of customers which are referred to in the notice, which are more than three dozens in number, have not been supplied to the petitioner. While

giving reply to the show cause notice, it was categorically mentioned that the statements upon which the the respondents are relying upon, have not been supplied. The reply given by the petitioner is dated 14th February, 2002 which is at Annexure “C” to the memo of the petition, wherein in paragraphs 3(4), 3(5)and 7, it has been averred that statements of witnesses have not been supplied to the petitioner. Similarly in the memo of Appeal No. 1 of 2002 before the Collector also, it was averred that statements referred to in the show cause notice as well as in the order passed by the District Supply Officer, Sabarkantha were not supplied to the petitioner. This contention has also been taken in the memo of the present petition that there is a breach of principles of natural justice. These statements ought to have been supplied to the petitioner so that proper reply can be given by the petitioner. Even before the Revisional Authority also, this contention was raised which has been brushed aside by observing that the petitioner could have asked for cross-examination of those witnesses. Unless statements are supplied to the petitioner, no question of cross-examination

whatsoever arises. Thus, the Revisional authority, in para-6 of its order, has also relied upon the statements recorded by the concerned respondent authority while issuing notice and on the basis of these statements, the whole case has been decided against the petitioner. Thus, there is a violation of principles of natural justice. The learned counsel for the petitioner has also relied upon the decision rendered by this Court in the case of **Kiron Oil Industries vs. District Collector, Jamnagar** reported in 1996(2) GLR, 127 and it is submitted that the impugned orders may be quashed and set aside and the matter may be remanded to the District Supply Officer for its fresh decision, within stipulated time.

3. I have also heard the learned Assistant Government Pleader Mr. Pandya who has submitted that looking to the nature of reply of the show cause notice given by the petitioner, it appears that the petitioner was having full knowledge of the statements of witnesses. Nowhere in the memo of the petition, it is stated that these statements were not supplied to the petitioner. It is also submitted that

there are consistent findings of facts and therefore, this Court may not interfere with the decision taken by the respondent authorities in exercise of powers under Article 226 of the Constitution of India.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, the order dated 15th February, 2002 passed by the District Supply Officer, Sabarkantha at Himmatnagar; the order dated 24th July, 2002 in Appeal NO. 1 of 2002 passed by the Collector, Sabarkantha at Himmatnagar and the order dated 6th January, 2004 in Revision Application no. 56 of 2002 passed by the Deputy Secretary, Food and Civil Supplies Department, State of Gujarat, Gandhinagar are required to be quashed and set aside on the following facts and reasons:

(i)It appears from the show cause notice dated January, 2002 given by the respondent authority which is at Annexure “B” to the memo of the petition, it appears that several allegations have been levelled against the petitioner. Looking to the allegation nos. 4,10 and 11, it

appears that several statements have been recorded. They are more than 40 in number and the whole case of the concerned respondent authority in the show cause notice was based upon these statements. These statements of the witnesses which are referred to in the show cause notice at Annexure “B” are at pivotal position.

(ii) Looking to the reply of the show cause notice which is at Annexure “C” and dated 14th February, 2002, over and above denial of the allegations, it is stated by the petitioner that the statements recorded by the concerned respondent authorities and referred to in the show cause notice have not been supplied, especially in para-7 of the reply. There are several other statements in the reply that these statements have been given just to harass the present petitioner. Despite this reply, these statements have not been supplied to the petitioner. The statements are bone of contention. The statements affect the very root

of the allegations. The statements have been frequently referred to in the show cause notice. In no uncertain terms, it has been stated in reply that these statements have not been supplied to the petitioner. Thus, there is a breach of principles of natural justice. Rules of natural justice require that whatever documents upon which the notice issuing authority is relying upon ought to be supplied to the noticee so that the petitioner-noticee can give reply of the allegations. The statements ought to be read and re-read by the petitioner so that accurately reply can be given.

(iii)The District Supply Officer, while passing the impugned order dated 15th February, 2002 has relied upon the statements of no less than 42 persons and has held that the allegations levelled against the petitioner are proved on the basis of those statements. This basic requirement of supply of statements is not fulfilled. Those statements are relied upon by

the District Supply Officer, Sabarkantha at Himmatnagar. Still however, they were not supplied to the petitioner.

(iv)Looking to the memo of Appeal NO.1 of 2002, it is categorically stated that the statements which are referred to in the show cause notice and which are relied upon by the District Supply Officer, Sabarkantha have not been supplied. It has not been properly dealt with by the Collector and has hurriedly arrived at the conclusion that on the basis of those statements, the allegations levelled against the petitioner are proved. Thus, even the appellate authority has also not properly appreciated the breach of principles of natural justice.

(v) Against the order of Collector, the petitioner preferred Revision Application No. 56 of 2002. Before the Revisional Authority, it appears that this contention has been raised, but it has been dealt with so casually that the Revisional Authority has thought it fit that without giving statements of witnesses, the

petitioner could have cross-examined those witnesses. Cross-examination requires statements in the hands of the petitioner. Such a simple proposition has not been properly appreciated by the Revisional authority. More than once, these statements have been referred to and relied upon even by the revisional authority in its order dated 6th January, 2004. But these statements were not supplied to the petitioner. Thus, principles of natural justice have been grossly violated. It leads to an arbitrary action on the part of the respondent authorities. Arbitrariness and equality are sworn enemies of each other. Wherever there is presence of arbitrariness, equality is absent and when there is a presence of equality, arbitrariness is absent. Looking to the facts of the present case, it appears that there is a clear breach of principles of natural justice. The decision taken by the respondent authorities right from the District Supply Officer to Revisional Authority are violative of Article 14 of the Constitution of India.

(vi) It has been held by this Court in the case of Kiron Oil Industries Vs. District Collector, Jamnagar reported in 1996(2) Gujarat Law Reporter, 127 and more particularly in para-3 as under:

> ".....Therefore, where preliminary statements are recorded at the time of raid and thereafter, show cause notice is issued under section 6B, all that material which the authority may reply upon is to be again put to the person concerned authorities have dealt with the matter rather casually and have not considered the defence raised by the petitioner before coming to the conclusion that the goods were required to be confiscated....."

Thus,the documents upon which reliance is placed by the respondent authorities ought to be supplied to the petitioner. Over and above this judgment, there are several unreported judgments also, needless, under the very Act,that is, under Essential Commodities Act. Frequently, this Court has observed that the judgments which are referred to in the show cause notice deserve to be supplied to the petitioner to avoid multifariousness of proceedings and litigations. While issuing notice, all care must be taken by the respondent authorities that necessary documents relied upon ought to be

supplied to the petitioner.

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, the dated 15th February, 2002 passed by the District Supply Officer, Sabarkantha at Himmatnagar; order dated 24th July, 2002 in Appeal No. 1 of 2002 passed by the Collector, Sabarkantha at Himmatnagar as well as the order dated 6th January, 2006 passed by the Deputy Secretary, Food and Civil Supplies Department, State of Gujarat, Gandhinagar in Revision Application No. 56 of 2006 are hereby quashed and set aside. The matter is remanded to the District Supply Officer, Sabarkantha at Himmatnagar and he is directed to supply all those documents to the petitioner and thereafter hear the petitioner and pass a fresh order in accordance with law. This exercise will be done within eight weeks from the date of receipt of writ from this Court. Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.Patel,J)

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